UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

APCOA/STANDARD PARKING

Employer

and CASE 7-RD-3365

CAROLINE LETT, an Individual

Petitioner

and

LOCAL 283, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Union

APPEARANCES:

Fredric H. Fischer, Attorney, of Chicago, Illinois for the Employer.
Loretta Capers, of Detroit, Michigan for the Petitioner.
Steve Hicks and Mike Finegan, of Wyandotte, Michigan for the Union.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:[1/]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[1] The Employer filed a brief that was carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks a decertification election in a unit of about seven full-time and regular part-time cashiers, attendants, and maintenance employees employed at the Employer's Woodward Avenue, Detroit, Michigan facility. The Union maintains that there is a contract that serves as a bar to the holding of an election and that the petition should be dismissed. The Employer asserts that there is no executed contract in effect to bar an election. For the reasons set forth below, I find that the parties never executed an agreed-upon contract and that there exists no bar to the instant petition.

About October 2001, the Employer and the Union set out to negotiate their first contract regarding the instant unit. The parties met and agreed to use their previously negotiated contract covering another unit at the First National Building as a model. From this point, most of the communications between the parties was by telephone and mail. On January 9, 2002, the Employer, by letter, stated its final offer regarding the 11 outstanding issues.[2] On January 22, the Union rejected the Employer's final offer and asked to resume bargaining. On February 7, the Employer sent a new final offer to the Union which restated the 11 outstanding issues and changed the effective dates of a putative contract. The Union, on February 11, again rejected the Employer's final offer.

On March 22, the Union filed charges with the Region alleging, *inter alia*, that the Employer had improperly declared impasse and dealt directly with employees. On April 1, the Employer implemented various economic proposals made in its final offer. The Employer, on April 18, filed charges with the Region alleging that the Union was engaging in bad faith bargaining and refusing to present the Employer's final offer to the membership for a vote. On May 31, the Region dismissed both charges for lack of merit.

Upon the resumption of negotiations on July 2, the Employer accepted the Union's proposal for an arbitration provision, which was 1 of the 11 outstanding issues. The Employer indicated that the remaining 10 issues would stand as stated in its January 9 letter with the exception that the contract term would now run from August 1 through July 31, 2005. On August 21, the Union, by letter, rejected the Employer's latest offer. However, on October 1, without any additional substantive bargaining, the Union, by letter, accepted the Employer's July 2 offer and asked the Employer to forward the

[2] The dates referenced refer to 2002 unless otherwise specified.

necessary documents for signature.[3] On October 16, the Union again asked the Employer to forward the contract for signature. The Employer responded on October 17 by stating that it would not prepare the contract and that it was up to the Union to prepare a contract for signature. The instant petition was filed on October 23.

During the last week of October, the Union compiled the various documents into a proposed contract and mailed it to the Employer. No further steps were taken by the Union, nor were conversations held between the parties, regarding execution of the contract. To date, the parties have not signed or initialed any writings reflecting the terms of the contract.

The Board's contract-bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. ***Direct Press Modern Litho***, 328 NLRB 860 (1999). The doctrine is not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. ***Bob's Big Boy Family Restaurants v. NLRB***, 625 F.2d 850, 853-854 (9th Cir. 1980).

The seminal case establishing the Board's substantive and technical contract-bar rules is ***Appalachian Shale Products***, 121 NLRB 1160 (1958). In that case, the Board held that only a written contract fully executed prior to the filing of a petition may serve as a bar. The Board explicitly rejected the argument, echoed here by the Union, that an unsigned agreement has bar status because the parties consider it properly concluded and have implemented some or all of its provisions. The signed writing setting forth the parties' agreement may be a formally executed booklet or a series of informal written exchanges initialed by the parties to signify mutual acceptance of terms. ***Pontiac Ceiling & Partition Co.***, 337 NLRB No. 16 (Dec. 20, 2001); ***Yellow Cab Co.***, 131 NLRB 239 (1961). In no case, however, has the Board ascribed bar quality to an unsigned agreement. The Board characterizes the signing requirement as a "relatively simple" one to which it expects parties to adhere. ***Appalachian Shale***, supra at 1162.

While the Union asserts that the written acceptance of unsigned proposals be placed on the same footing for bar purposes as a signed contract, the Board has squarely declined to adopt the Union's reasoning. In ***DePaul Adult Care Communities***, 325 NLRB 681 (1998), a union asserted that an unsigned contract barred a petition because the writing accurately reflected the parties' agreement and the employer's attorney unaccountably failed to sign it. The Board reiterated the teaching of ***Appalachian Shale*** and further explained: "Although…the moment of apparent contract formation serves as a yardstick…in the context of an alleged unfair labor practice…it is of no moment in a contract-bar context, if the collective-bargaining agreement is unsigned. Without…[a] signature on the collective-bargaining agreement, or some document referring thereto, the

[3] Contrary to the Employer's assertions, I do not find that the Union's acceptance was ambiguous by not specifically delineating which offer it was accepting. By operation of law, each successive final offer by the Employer implicitly withdrew any prior offers.

agreement is insufficient to act as a bar." Id. at 682. See also ***Seton Medical Center***, 317 NLRB 87 (1995).

For the above reasons, I find that the Union's acceptance of the Employer's final offer does not satisfy the Board's formal requirements for serving as a bar to the instant petition.[4]

5. Based on the stipulation of the parties, I find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time cashiers, attendants, and maintenance employees employed by the Employer at its facility located at 500 Woodward Avenue, Detroit, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

Accordingly, a question concerning representation has been raised and those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 20th day of November 2002.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board, Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226-2569

Classifications

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[4] I am unpersuaded by the Employer's alternative argument that even if a contract was executed by the parties, the Employer's request that the contract be submitted for ratification by the membership precluded the contract from becoming effective as a bar. Prior ratification is required only when it is made an express condition precedent in the contract itself, which is clearly not the case here. ***Appalachian Shale***, supra; ***Aramark Sports & Entertainment Services***, 327 NLRB 47 (1998). The Union never expressly agreed in the contract itself to ratification as a condition precedent, and it is insufficient that ratification is required by the Union's constitution or bylaws.